

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:

JOSEPH LEWIS,

Former Employee and  
Institution-Affiliated Party  
of:

TCF Bank Illinois, fsb  
Oak Brook, Illinois

RE: OTS Order No. MWR-97-01

dated: February 4, 1997

STIPULATION AND CONSENT TO ISSUANCE  
OF AN ORDER OF PROHIBITION AND ORDER TO  
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Joseph Lewis ("Lewis"), former employee and institution-affiliated party of TCF Bank Illinois, fsb, Oak Brook, Illinois, OTS No. 0445 ("TCF" or the "Institution") that the OTS is of the opinion that grounds exist to initiate administrative cease and desist and prohibition proceedings against Lewis pursuant to 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).<sup>1</sup>

WHEREAS, Lewis desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without

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1. All references in this Stipulation and Consent and the Orders are to the U.S.C. as amended.

admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) TCF, at all times relevant hereto, was a "savings association" within the meaning of 12 U.S.C. § 1813(b), and 12 U.S.C. § 1462(4). Accordingly, TCF was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) Lewis, as a former branch manager of TCF, is deemed to be an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an administrative enforcement proceeding against institution-affiliated parties. Therefore, Lewis is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against him pursuant to 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds that from 1993 through 1995, Lewis, without authorization, misapplied \$103,000.00 of the funds of TCF to his own use, by making unauthorized withdrawals from accounts at TCF. As a result of his actions, Lewis (1) engaged in a violation of the law or breached his fiduciary duty of honesty to TCF; and (2) TCF suffered a financial loss or he received a financial benefit or other gain; and (3) the

violation of law or breach of fiduciary duty demonstrates willful and/or continuing disregard by Lewis for the safety and soundness of TCF.

3. Consent. Lewis consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders"). He further agrees to comply with their terms upon issuance and stipulates that the Orders comply with all requirements of law.

4. Finality. The Orders are issued by the OTS under the authority of 12 U.S.C. § 1818(b) and 12 U.S.C. §1818(e). Upon their issuance by the Regional Director or designee for the Midwest Region, OTS, they shall be final orders, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. Lewis waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. §§ 1818(b) and (e);

(b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. §§ 1818(b) and (c);  
and

(c) the right to seek judicial review of the Orders, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses arising under the common law or under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28

U.S.C. § 2412.

6. Indemnification. Lewis shall neither cause nor permit TCF (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Order of Prohibition and Order to Cease and Desist for Affirmative Relief. Nor shall Lewis obtain any indemnification (or other reimbursement) from the Institution (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of Lewis in connection with this action shall be returned to TCF (or the successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

(a) Lewis acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist and prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Lewis that arise pursuant to these actions or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Issuance of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, Lewis agrees that he will not assert this proceeding, his

consent to the entry of the Orders, and/or the entry of the Orders, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other Federal or state governmental entity.

8. Acknowledgment of Criminal Sanctions. Lewis acknowledges that 12 U.S.C. §1818(j), sets forth criminal penalties for knowing violations of the Orders.

9. Agreement for Continuing Cooperation. Lewis agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to TCF, its holding companies, its subsidiaries, and its institution-affiliated parties, except that Lewis does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If Lewis invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., Lewis agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

10. Miscellaneous.

(a) The construction and validity of this Stipulation and the Orders shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and the Orders shall also mean any of the OTS's predecessors, successors, and assigns.

(c) The section and paragraph headings in this Stipulation and in the Orders are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Orders.


(d) The terms of this Stipulation represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.


(e) This Stipulation and the Orders shall remain in effect until terminated, modified, or suspended by a formal written action of the OTS, acting by and through its Director, Regional Director, or other authorized representative.

WHEREFORE, Lewis executes this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

Accepted By:  
Office of Thrift Supervision

  
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Joseph Lewis

  
\_\_\_\_\_  
Frederick R. Casteel  
Midwest Regional Director

Dated: 1/7/97

Dated: 2-4-97

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of: )  
JOSEPH LEWIS, )  
Former Employee and )  
Institution-Affiliated Party )  
of: )  
TCF Bank Illinois, fsb )  
Oak Brook, Illinois )  
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Order No. MWR-97-01

Dated: February 4, 1997

ORDER OF PROHIBITION  
AND  
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Joseph Lewis ("Lewis") has executed a Stipulation and Consent to Issuance of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation") on January 17, 1997; and

WHEREAS, Lewis, by his execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders") by the Office of Thrift Supervision ("OTS"), pursuant to 12 U.S.C. Sc1818(e) and 12 U.S.C. Sc1818(b).1

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1. All references to the United States Code ("U.S.C.") are as amended, unless otherwise noted.



NOW THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. Lewis is prohibited from further participation, in any manner, in the conduct of the affairs of TCF Bank Illinois, fsb, Oak Brook, Illinois ("TCF"), and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. Lewis is and shall be subject to the statutory prohibitions provided by 12 U.S.C. Sc 1818(e). Due to and without limitation on the operation of 12 U.S.C. ScSc 1818(e)(6) and 1818(e)(7), Lewis, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. Sc 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or any agency specified in 12 U.S.C. Sc 1818(e)(7)(A) ("Covered Institution"), including:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, state banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under 12 U.S.C. ScSc 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. Sc 1818(b)(9), e.g., subsidiaries and holding

companies of banks or savings associations;

(iii) any insured credit union under the Federal Credit Union Act, 12 U.S.C. ScSc 1781 et seq.;

(iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. ScSc 2001 et seq.;

(v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. Sc 1818(e)(7)(A)(v); and

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank.

(B) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. ScSc 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined in 12 U.S.C. Sc 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

3. The Stipulation is made a part hereof and is incorporated herein by this reference.

4. This Order is subject to the provisions of 12 U.S.C. Sc 1818(j), and shall become effective on the date it is issued.

5. Lewis shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

IT IS FURTHER ORDERED that:

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

7. Lewis is and shall be subject to the statutory requirements provided by 12 U.S.C. Sc 1818(b).

8. Lewis shall pay restitution to TCF in the amount of \$103,000.00 as set forth in the Settlement Agreement by and between TCF and Lewis and signed by Lewis on January 27, 1997, as it may be subsequently amended from time to time in the future ("Settlement Agreement").

9. The Settlement Agreement, as fully executed and delivered, is and shall be incorporated herein by reference and, in addition to the remedies set forth in the Settlement Agreement, shall be enforceable by the OTS as a term of this Order as though fully set forth in this Order. Notices of payments made pursuant to the Orders shall be provided to the OTS Midwest Regional Enforcement/Litigation Department by U.S. Mail at:

Mr. Gary C. Anderberg  
Enforcement/Litigation  
Office of Thrift Supervision  
Post Office Box 619027  
Dallas/Fort Worth, Texas 75261-9027

10. The Stipulation is made a part hereof and is incorporated herein by this reference.


11. This Order is subject to the provisions of 12 U.S.C. Sc1818(j), and shall become effective on the date it is issued.

12. Lewis shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

THE OFFICE OF THRIFT SUPERVISION

By:

  
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Frederick R. Casteel  
Midwest Regional Director